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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 JOHN RUBI,

14 Plaintiff,

15 vs.

16 ALLIS-CHALMERS CORPORATION
17 PRODUCT LIABILITY TRUST, et al.

18 Defendants.

No. C05-3445 MJJ

STIPULATION AND ~~[PROPOSED]~~
ORDER OF DISMISSAL AND REMAND
TO STATE COURT

19 Case 3:05-cv-03445-MJJ Document 5 Filed 08/26/2005 Page 1 of 2

IT IS HEREBY STIPULATED by and between the parties to this action through their
designated counsel that:

1. This case was originally filed in the Superior Court of California for the County of
San Francisco, action no. CGC 04 436613.

2. Defendant MCDONNELL DOUGLAS CORPORATION ("MDC") filed its Notice
of Removal on August 24, 2002, claiming that this Court has subject-matter jurisdiction under
28 U.S.C. §1442(a)(1), on the ground that defendant MDC was acting under the direction of
agencies and officers of the United States government.

3. Defendant MDC is dismissed from the above entitled action, pursuant to
Fed.R.Civ.Proc. 41 (a)(2). This dismissal is with prejudice, each party to bear its own costs.

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1 4. The parties note that plaintiff John Rubi is also a plaintiff in the related case, *Manuel*
2 *Rampola et al. v. Viacom Inc., et al.*, Northern District California case no. CO5-1461 MJJ,
3 which has been conditionally transferred to the Eastern District of Pennsylvania Multi District
4 Litigation Docket No. 875, *In re Asbestos Products Liability Litigation*. The parties hereto have
5 also entered into a Stipulation for dismissal of MDC, with prejudice, from that action.

6 5. Because the sole removing defendant has been dismissed, no basis currently exists
7 for this Court to exercise jurisdiction over this action, remand to the Superior Court of
8 California for the County of San Francisco is appropriate.

9 Accordingly, the parties petition this court for an order dismissing defendant
10 MCDONNELL DOUGLAS CORPORATION, with prejudice, and remanding the action to the
11 Superior Court of California for the County of San Francisco.

12
13 **SO STIPULATED.**

14 Dated: August 26, 2005

BRYAN CAVE LLP

15
16 By: 

Paul A. Levin
Attorneys for Defendant
MCDONNELL DOUGLAS CORP.

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18 Case 3:05-cv-03445-MJJ Document 5 Filed 08/26/2005 Page 2 of 2

19 Dated: August 26, 2005

BRAYTON ♦ PURCELL LLP

20
21 By: 

Nance F. Becker
Attorneys for Plaintiff, JOHN RUBI

22
23 **IT IS SO ORDERED.**

24
25 Dated: 8/30/2005


MARTIN J. JENKINS
United States District Court Judge